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Response to 06-16-2008 Office action

Date of deposit: September 15, 2008

Remarks

Applicant acknowledges with appreciation the following withdrawals of rejections under 35 U.S.C. §103(a):

claims 73-83, 85-91, 107-110 and 112 in view of Checco (U.S. patent number 5,859,898) in combination with Lovett (U.S. patent number 4,450,477) and Schussler et al. (U.S. patent number 4,150,254);

claim 92 in view of Checco (U.S. patent number 5,859,898) in combination with Lovett (U.S. patent number 4,450,477) and Schussler et al. (U.S. patent number 4,150,254), the primary references analyzed above, and further in combination with Wagner et al. (U.S. patent number 6,335,736);

claims 93, 99, and 129-130 in view of Krisbergh et al. (U.S. patent number 5,138,649) in combination with Krisbergh et al. (U.S. patent number 5,999,970);

and, claims 94-98, 100, and 131 in view of Krisbergh '970 in combination with Krisbergh '649 and Krueger et al. (U.S. patent number 6,460,075).

Upon entry of this Response, claims 73-83, 85-100, 107-110, 112, and 129-131 are pending.

Claims 73-83, 85-91, 107-110, 112, and 129-131 comply with 35 U.S.C. §103(a)

In discussing the rejections under 35 U.S.C. §103(a) of claims in this case, Applicant refers to the *Manual of Patent Examining Procedure* (M.P.E.P.) §2141, which states that when applying 35 U.S.C. §103 four tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined. M.P.E.P., §2141, p. 125 (8th Ed. Rev.3, August, 2005); *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). [emphases added]

Claims 73-83, 85-91, 107-110 and 112 comply with 35 U.S.C. §103(a)

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The Office action on p. 6 rejects claims 73-83, 85-91, 107-110 and 112 under 35 U.S.C. §103(a) in view of Checco (U.S. patent number 5,859,898) in combination with Lovett (U.S. patent number 4,450,477) and Sizer et al. (U.S. patent number 6,021,324). Applicant respectfully traverses.

For the convenience of the reader prior to analyzing the cited references, Applicant here reviews the subject matter of independent claims 73 and 107.

Claim 73 is directed *inter alia* to a television messaging gateway for handling messages, adapted for operating in conjunction with a television distribution system connected to a video downstream network constructed to carry video signals to a plurality of end terminals, wherein at least one terminal is constructed to selectively display said video signal on a television screen, the television messaging gateway having: a message control interface adapted to couple to a messaging server to control at least one message having address information associating the message with at least one user, a video output module capable of generating video frame signals corresponding to said message server and being adapted to couple to a downstream network for outputting video frame signals on a television coupled to an addressable terminal, an input interface adapted to connect to an upstream network for receiving user input signals inputted using a telephone and logic for directing said message between the message control interface and a video output module.

Claim 107 is directed *inter alia* to a method for handling messages, that involves using a telephone to input commands to a television messaging gateway to select at least one message directed to a user causing the television messaging gateway to output messages via a television distribution system to a television set associated with the user.

In other words claims 73 and 107 as a whole are directed to an invention that allows a subscriber to use a telephone to control and view messages on a television set.

As a preliminary matter, the Supreme Court in *Graham v. John Deere*, 383 U.S. 1 provided an analytical construct to be used when determining whether claims are obvious under 35 U.S.C. §103(a) in view of the prior art. One aspect of this analytical construct includes characterizing each cited reference, as a background for a legal analysis, prior to analyzing the combination of the references.

Checco (U.S. patent number 5,859,898, issued January 12, 1999)

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Checco shows a message system that includes voice or data messages that are left by a user who does not have to be a subscriber and retrieved at the convenience of the recipient. Checco, Abstract, lines 1-3, column 8, line 58. A subscriber may connect to the system using a telephone, a computer, a fax machine or a set-top box connected to a television or monitor, preferably accessing the system at a single entry point. Checco, column 4, lines 24-33. The system preferably requests a user id and password and determines whether the user is a subscriber or a secondary user. The subscriber gets a customer menu and the secondary user gets restricted access according to the user id. Checco, column 7, lines 19-22 & 30-36. The user providing no user id or password is restricted to uploading messages for the subscribers. Ibid lines 45-47. To leave a message the user issues a request to the system and inputs the message using a calling device. The message is processed by the PARS and forwarded to the data message storage. Checco, column 8, lines 57-67 thru column 9, lines 1-28. To retrieve a message the subscriber selects a message from the menu on the calling device, the message is retrieved from the data message store, converted to the appropriate format by PARS and delivered to the calling device. Checco, column 10, lines 49-61.

Thus, Checco evaluated as a whole describes a system that accepts requests to leave messages using multiple calling devices and data formats, and displays stored messages on multiple subscriber calling devices. The system restricts user access to content with user id and password combinations.

The Office action admits on page 4 that Checco does not explicitly show a video downstream network.

Nowhere does Checco teach or suggest a messaging control interface for controlling at least one message having address information associating the message with at least one user, a video output module adapted to couple to a downstream network for outputting video frame signals on a television coupled to an addressable terminal with an input interface adapted to connect to an upstream network for receiving user input signals inputted using a telephone and logic for directing a message between a message control interface and a video output module, to which claim 73 is *inter alia* directed. That is, nowhere does Checco teach or suggest a system for a person sitting and watching television to automatically receive an email or a telephone call on the television, in real time.

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Nowhere does Checco teach or suggest a method for handling messages using a telephone, inputting commands to a television messaging gateway, to select at least one message directed to a user, causing messages or a message to be outputted to a television set associated with the user, to which claim 107 is *inter alia* directed.

In other words, nowhere does Checco teach or suggest a system with which a user can use a telephone to send an email, video or other message to a particular addressed terminal for display on a television.

Lovett (U.S. patent number 4,450,477, issued May 22, 1984)

Lovett shows a system that delivers selected information from data banks to individual cable television subscribers through the same system that brings them television programming and that can be displayed on unmodified television sets. Lovett, column 6, lines 26-36.

Lovett's system converts the digital information selected from the databank by the individual user to analog form and transmits that information on a unique frequency corresponding to the particular subscriber's television set. Ibid, column 7, lines 61-66. Lovett shows a system in which the subscriber receives the selected information "[o]nly when the subscriber's television set is tuned to his dedicated UHF information channel." Lovett, column 14, lines 12-14 [emphasis added].

Lovett states as an objects of his system that individual subscribers are able to receive selected information from data banks on their own, unmodified television sets without the need for expensive terminal equipment at the subscribers' locations and that the system maintains privacy by giving each subscriber a dedicated television channel." Lovett, column 6, lines 29-42.

Thus, Lovett's system evaluated as a whole shows the use of a unique UHF frequency for each subscriber as the operating principle by which the system supplies individualized content to subscribers.

Nowhere does Lovett teach or suggest a messaging control interface for controlling at least one message having address information associating the message with at least one user, a video output module adapted to couple to a downstream network for outputting video frame signals on a television coupled to an addressable terminal with an input interface adapted to connect to an upstream network for receiving user input signals inputted using a telephone and logic for directing a message between a message control interface and a video output module, to

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which claim 73 is *inter alia* directed. That is, nowhere does Lovett teach or suggest a system for a person sitting and watching television to automatically receive an email or a telephone call on the television, in real time.

Nowhere does Lovett teach or suggest a method for handling messages using a telephone, inputting commands to a television messaging gateway, to select at least one message directed to a user, causing messages or a message to be outputted to a television set associated with the user, to which claim 107 is *inter alia* directed. In other words, nowhere does Lovett teach or suggest a system with which a user can use a telephone to send an email, video or other message to a particular addressed terminal for display on a television.

Sizer et al. (US patent number 6,021,324, issued February 1, 2000)

Sizer et al. taken as a whole shows control of premises appliances and reception, storage and retrieval of telephone information via a premises recording unit (Sizer et al., column 1, lines 59-64). This recording unit communicates with household appliances via a wireless packet transmitter which generates a radio, infrared or ultrasonic signal (Ibid., column 2, lines 17-23). Sizer describes "a premises" as a home or office (Ibid., column 1, lines 60-61). A television set connected to the recording unit via a video interface connector port is used to display information stored on the recording unit (Ibid., column 4, lines 44-49).

In Sizer, a premises recording unit answers a phone call from a user and prompts the user for a preprogrammed DTMF (dual tone multi-frequency) sequence (Ibid., column 7, lines 22-27). Based on the preprogrammed DTMF sequence the user activates a signal packet transmitter which sends a packet signal to an appliance controller for a coffee maker or other appliance (Ibid., column 7, lines 26-27). The packet signal includes an address portion which signifies that the coffee maker controller is the proper recipient of the signal packet and a data portion which signifies the desired instructions such as allowing electric current to flow to the coffee maker (Ibid., column 7, lines 28-33). In one example, Sizer shows the packet transmitter operating on a radio frequency between 2.45 GHz to 6.0 GHz on an antenna attached directly to the circuit board. Ibid., column 7, lines 55-60. The appliance controller can also include a transmitter for transmitting feedback information to the premises recording unit, thus forming a closed loop control system. Ibid, column 8, lines 5-8.